

# **EXHIBIT A**

**CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER**

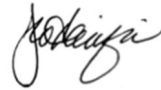
**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

Cynthia Russo, Lisa Bullard,	)
Ricardo Gonzales,	)
International Brotherhood	)
of Electrical Workers Local 38	)
Health and Welfare Fund,	)
295-295c Welfare Fund, and	)
Steamfitters Fund Local 439,	)
On Behalf of Themselves and All	)
Others Similarly Situated,	)
Plaintiffs,	)
v.	)
Walgreen Co.,	)
Defendant	)

**EXPERT REPORT OF  
JOHN W. HANIFIN**

**March 17, 2023**

Signed: \_\_\_\_\_



**John ("Bill") Hanifin**

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**I. BACKGROUND AND QUALIFICATIONS**

I received my Bachelor of Science in Finance from the University of Virginia in 1978, and since 1998, I have been active in the customer loyalty industry and have gained a comprehensive understanding of the considerations and requirements needed to design, manage, and measure customer Loyalty Programs. I am a Certified Loyalty Marketing Professional (“CLMP™”) and have worked in virtually every customer-facing brand and retail sector, as well as in numerous geographic markets. I am familiar with the spectrum of Loyalty Program structural and operating models used by brands and retailers including membership, fee-based, and subscription programs.

During my career, I served as a strategist and business development resource for Visa, Frequency Marketing, Inc., and Alliance Data Systems before founding Hanifin Loyalty LLC in 2006. During my time with Visa, Frequency Marketing, Inc. and Alliance Data Systems, I worked with American Express, Chase Bank, Red Roof Inn, Grupo Posadas, and many other brands. Most relevant to this opinion, I worked with Best Buy in 2003 to launch its Rewards Zone Loyalty Program, a fee-based membership model.

During the period of 2006 – 2016, I worked with many types of businesses to create, launch, manage, and measure the effectiveness of Customer Marketing. A partial client list includes Circle K, Denny’s, Lucky Brands, Master Card, Maverik, McGraw Hill, Panera Bread, Redbox, 7-Eleven, Scotiabank, The Metropolitan Museum of Art, and Visa. My firm achieved industry recognition through inclusion in the Q1 2016 Forrester Wave™: Customer Loyalty Solutions for Midsize Organizations report.

In 2016, I became one of the owners of Wise Marketer Group (“WMG”) and serve as its Chief Executive Officer. WMG has two business units, TheWiseMarketer.com (“TWM”), a twenty-year-old online publication that is known as the “global voice of customer loyalty” and The Loyalty Academy™ (“TLA”), which offers educational services for marketing professionals in the industry.

TWM is a recognized global source of news, education, and research serving the Customer Engagement, Loyalty, CRM, and Digital Marketing industry worldwide. TLA created the first professional training certification in the industry, the CLMP™. TLA has certified 580 marketing professionals in 41 countries through online training, corporate and public workshops.

I am a frequent keynote presenter and session facilitator at industry events. Over the past 10 years, I have appeared at Loyalty Expo, Loyalty Summit UK, C2 Montreal, Winsight Convenience Retail University, National Association Convenience Stores, and JTI (Japan Tobacco International). I also regularly lead public workshops for the Loyalty Academy certification program, as well as private training events for clients. WMG hosts and participates in these events on a global basis.

In the past ten years, I have published articles in the following online sites:

- Loyalty Truth blog - I operated this blog as part of Hanifin Loyalty LLC, but shifted my content marketing efforts to WMG in 2018. The latest post on Loyalty Truth is 2020.
- The Wise Marketer – My byline is associated with approximately 47 posts dated between 2018 – 2023. I have contributed to or created other posts as “Wise Marketer Staff” during this time. A list of the posts under my byline is included in the reference section.
- The Forbes Agency Council – Two posts between 2018 – 2023, included in the reference section.

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In the past four years I have not testified as an expert at trial or by deposition. Further information regarding my qualifications, and a complete list of all publications that I have authored in the past ten years can be found attached to my report as **Exhibit A**.

**II. COMPENSATION**

Walgreen Co. (“Walgreens”) is compensating Hanifin Loyalty LLC at the hourly rate of \$250. My compensation is not dependent on the outcome of this case.

**III. SCOPE OF OPINION**

I have been retained by Reed Smith LLP, Counsel for Walgreens to evaluate whether there are any significant obstacles to customer enrollment in Walgreens’ Prescription Savings Club (PSC), including analyzing the value propositions that customers consider when evaluating whether to join (or enroll) in a brand Loyalty Program such as Walgreens’ PSC. The materials I considered in forming my opinions are attached to this report as **Exhibit B**.

My analysis is ongoing, and I reserve the right to modify and/or supplement my opinions should other relevant information become available after the submission of this report.

**IV. SUMMARY OF OPINIONS**

It is my opinion that PSC qualifies as a customer Loyalty Program, because the program follows the marketing and operating structure of a customer Loyalty Program, as I define it based on my experience. The operating structure of a Loyalty Program includes the creation of obstacles to enrollment.

It also is my opinion that Walgreens designed PSC so that customers faced obstacles to enrollment that distinguished club members from other customers.

To evaluate the effect of obstacles to enroll in PSC, I analyzed the obstacles themselves and the benefits of participating in PSC, which I refer to as the Customer Value Proposition (Value Proposition). For Walgreens’ PSC, those obstacles include making the effort to participate in the enrollment process and in paying a membership fee. In my experience, the enrollment process by itself constitutes a meaningful obstacle to customers joining a program. Many customers are not interested in going through an enrollment process to join a Loyalty Program for a number of reasons, including a lack of time, lack of interest, lack of convenience, privacy concerns, and other reasons that I describe below. Introducing a membership fee to a Loyalty Program heightens the obstacles to enrollment beyond the enrollment process itself. That is, even of those who are willing to engage in the enrollment process in order to join a Loyalty Program, in my experience, most customers resist paying even a small amount to join a Loyalty Program.

Based upon my experience and analysis, the obstacles to enroll in PSC are significant, meaning that a customer would have to consider them in comparison to the potential benefits of PSC before deciding to enroll, and many customers would likely decide not to join, distinguishing club members from other customers.

**CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER****V. OPINIONS****A. Relevant Factual Background: Walgreens' PSC**

Walgreens piloted PSC in 2006 and launched PSC nationally in August 2008.<sup>1</sup> The program continues to operate today at all Walgreens and Duane Reade stores located in the United States and Puerto Rico, excluding Walgreens stores in certain states. Until January 2020, persons receiving benefits from Medicare or Medicaid programs were ineligible to join the PSC.<sup>2</sup>

PSC is a membership-based program providing members with access to lower prices on prescription medications and other health-related products, among other benefits. Based on my analysis and the documents I reviewed, Walgreens designed the program to help price-sensitive customers save money on their prescription drugs.

In order to receive the benefits of PSC, customers must elect to join the program. Enrolling in the program requires the payment of an annual fee of \$20 for individuals joining the program and \$35 per year for families with up to five family members and agreeing to certain terms and conditions, including that the program can only be used when customers forgo using insurance to pay for a prescription and that Walgreens can change the drugs covered by the program at any time.<sup>3</sup>

Members of PSC are entitled to receive lower prices on three tiers of generic prescription medications and can purchase these medications in 30- or 90-day supplies.<sup>4</sup> The medications with "value" prices are identified on a list of select medications.<sup>5</sup> The list also identifies that thousands of other drugs that are not broken down into three tiers also have lower prices. Individuals can perform a search on Walgreens' website to determine the PSC price for a particular medication. Customers on their own can determine the estimated amount of potential savings they personally will gain through PSC membership and make a comparison of these savings to the membership fee.<sup>6</sup> In addition, at various times, Walgreens offered a tool by which a customer could look up their medications to review the PSC price.<sup>7</sup>

**B. Loyalty Program Overview**

The term "Loyalty Program" refers to the range of business models used by a seller of branded products to connect that brand with its customers in an attempt to encourage behavior change in customers.

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<sup>1</sup> "Prescription Savings Club, FY09 Interim Marketing Strategy," January 2009, Walg\_Forth\_00005266 ("PSC FY09 Interim Marketing Strategy"), at Walg\_Forth\_00005268.

<sup>2</sup> Walgreens' Third Amended Objections and Responses to Plaintiffs' Second Set of Requests for Admission, *Cynthia Russo, et al. v. Walgreen Co.*, Case No. 1:17-cv-2246, October 28, 2021, Response to Request for Admission No. 71.

<sup>3</sup> "Prescription Savings Club Talking Points and Frequently Asked Questions (FAQs)," Walg\_Forth\_00040901 ("PSC Talking Points and FAQs 2012"), at Walg\_Forth\_00040901-05; Walgreens, "Prescription Savings Club," available at <https://www.walgreens.com/psc/prescription-savings-club> (last visited March 14, 2023); "Prescription Savings Club, Terms and Conditions," ("Current Terms and Conditions") available at <https://www.walgreens.com/topic/psc/prescription-savings-club/psc-terms-and-conditions.jsp?o=acs> (last visited March 16, 2023).

<sup>4</sup> PSC Talking Points and FAQs 2012"), at Walg\_Forth\_00040901-905; Current Terms and Conditions.

<sup>5</sup> "Value-Priced Medication List," Walg\_Forth\_00012624- Walg\_Forth\_00012627.

<sup>6</sup> "Value-Priced Medication List," Walg\_Forth\_00012624- Walg\_Forth\_00012627.

<sup>7</sup> See Walgreens, "PSC: Drug Pricing," Walg\_Forth\_00045054; Current Terms and Conditions.

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Loyalty Programs seek to change customer behavior in a positive way for both the brand and the customer. In my experience, the short-term goal is to achieve financial objectives like increased sales, visits, etc., while the long-term goal is to establish valuable, long-lasting, mutually beneficial relationships that result in customers continuing to support the brand, as opposed to its competitors.

Membership in all Loyalty Programs is, by definition, permission-based, meaning that a customer is only able to receive the benefits of the program after the retailer extends an invitation to customers to join the program and customers make a decision on whether to join.

The permission-based structure is fundamental to Loyalty Marketing and it solves a critical business problem for retailers and brands: to be able to identify individual customers, track their purchasing patterns, build profile information to serve them better, and deliver customized communications.

**i. Types of Loyalty Program Models**

To analyze the design of Walgreens' PSC, it is important to examine relevant Loyalty Program models in operation over time and today. Distinct elements of behavioral psychology influence customer decisions to participate in each type of program. The relevant Loyalty Models for the purposes of my opinions are membership models and subscription models, which are described below in more detail.<sup>8</sup>

**a. Membership Models: Obtaining Access To A Retailer**

Membership models require that potential customers complete the enrollment process and pay a membership fee in order to have access to the retailer's stores and products. For example, as set forth below, customers cannot shop at Sam's or Costco, or watch any content from Netflix without paying a membership fee.

Examples of membership models include:

- Costco's Everyday Value "Gold Star" Membership: In exchange for a \$60 annual fee, the customer can shop online and at Costco store locations. Additional benefits are available if a Member chooses to upgrade their Membership to the Executive Member program. This requires a \$120 annual fee and offers additional benefits, including an annual 2% reward on qualified Costco purchases (up to \$1,000), access to discounted rates on Costco services like auto insurance, and benefits on select Costco travel products.<sup>9</sup>
- Sam's Club's Membership program: In exchange for a \$50 annual fee, the customer can shop online and in physical Sam's Club store locations. Additional benefits are available if a Member chooses to upgrade their Membership to the PLUS level. This requires a \$110 annual fee and offers additional benefits including cash rewards, free shipping on many items, pharmacy and optical savings.<sup>10</sup>

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<sup>8</sup> There are additional types of loyalty models that I have not described here because they are not relevant to my evaluation of PSC. For example, a Coalition Model describes a program in which multiple brands collaborate to offer a combined value proposition to the customers.

<sup>9</sup> Costco, "Join Costco," available at <https://www.costco.com/join-costco.html> (last visited March 13, 2023).

<sup>10</sup> Sam's Club, "Join the Sam's Club family," available at <https://www.samsclub.com/join?pageName=aboutSams> (last visited March 13, 2023).

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- Netflix: In exchange for a monthly membership fee ranging between \$6.99 - \$19.99, the customer is able to watch movies, television shows, and other content from electronic devices.<sup>11</sup>

**b. Subscription Loyalty Models: Obtaining Additional Benefits At A Retailer**

A subscription loyalty model packages multiple benefits for customers into a program and charges a membership fee to participate. Unlike a membership model – e.g., no one can shop at Sam’s or Costco without paying a membership fee – customers do not need to pay a fee to access these retailers; however, these retailers offer special benefits only for those who join the program. That is, the key differentiator between a membership model and a subscription loyalty model is that in a membership model a customer must enroll and pay a fee to gain access to a retailer at all, whereas in the subscription model, customers must enroll and pay a fee to receive the special benefits of the program, but otherwise has access to the retailer.

When customers can access a retailer’s products without needing to pay a membership fee to walk in the door of the retailer, the presence of a membership fee to access additional program benefits makes it more difficult to enroll customers in a subscription loyalty program. The membership fee is considered an “obstacle to enrollment,” as many customers may not be willing to pay the fee to join to obtain the additional program benefits.

If successful, the retailer’s subscription model creates a comprehensive value proposition based on a bundle of special pricing on products, sufficiently lower prices, and service offers that exceeds the value of the membership fee. Customers who join subscription Loyalty Programs mentally justify the membership fee, increase spending with the brand, and remain a valuable customer over a longer period of time.

In 2003, Best Buy was the first US retailer to introduce a program with a membership fee and it was successful for that company. At the time, few retailers followed Best Buy’s model. Subscription Loyalty Programs gained attention with the launch of Amazon Prime in 2005. That is, Amazon is available to everyone; however, only Amazon Prime members receive special benefits, such as free two-day shipping on eligible products. Amazon Prime is the most notable and market-leading subscription-based Loyalty Program, and it has inspired retailers of all types to attempt to implement similar categories of subscription Loyalty Program, although few, if any, retailers have had the same level of success.

**ii. Promotions and Discounts**

Price-oriented marketing campaigns are typically referred to as “Promotions” or “Discounts” and are not Loyalty Programs. The benefits are almost always available immediately at the time of purchase to the customer and often are applied automatically. The Promotions and Discounts may change frequently and have no “model” associated with them. They are purely a marketing tactic, rather than a marketing strategy, which is how I describe a Loyalty Program.

Many Promotions and Discounts present no obstacles to receive them because there is no enrollment or membership fee, the customer does not need to provide any identifying information, and the customer

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<sup>11</sup> Netflix, “Choose your plan,” available at <https://www.netflix.com/signup> (last visited March 13, 2023).

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is not required to agree to any terms or conditions. Promotions and Discounts do not require customers to make any commitment, much less a long-term commitment, to participate in order to receive benefits.

The \$4 prescription program offered by Walmart and the \$4 prescription offers from HEB, and HyVee are examples of Promotions and Discounts in pharmacy and grocery retail.<sup>12</sup> In these instances, no enrollment is required and no membership fees are charged, and therefore there is no obstacle to joining, as would be seen in a Loyalty Program. Instead, my understanding is that customers receive these lower prices automatically when purchasing eligible drugs.

### **C. Obstacles to Enrollment in Loyalty Programs**

The enrollment structure for a retailer's Subscription Loyalty Program defines the level of obstacles to enrollment, including based on information collected, fees charged, and technology used.

#### **i. Psychology of Decision to Join a Subscription Loyalty Program**

Today, customers are very familiar with Loyalty Program offers from retailers. At one time, Loyalty Programs were considered to be an innovative marketing tool by retailers. As programs proliferated across the general marketplace, many of which were free to join, many customers began to feel fatigue with the number of available programs and hesitate to join these programs unless they perceived sufficient value in the program to make it worth their while to meet the requirements of enrollment.

Research has confirmed the effect of the influencing factors of customer decisions to enroll, participate, and remain in a Loyalty Program. Each factor is a barrier to entry into the Loyalty Program and is based on a behavioral psychology concept. Customers' reasons for not joining a Loyalty Program can depend on various factors, the most notable being if they are not inclined to shop at a particular retailer. Other factors include that they do not see the value in the program, or have privacy concerns and do not want to share personal data with the retailer. People are also busy, and scarcity of time is an important factor that may cause customers to avoid joining a Loyalty Program, as opposed to taking the time to do a full evaluation of its pros and cons.

Other reasons for not joining a Loyalty Program are significant in the mind of the customer but are highly subjective and difficult to predict. For example, some may believe they already belong to too many programs, or are just not interested in carrying another membership card or downloading yet another mobile app to their smartphone to have access to the program. Others will say they just do not like Loyalty Programs. For example, some customers are suspicious that any benefits offered by Loyalty Programs are recaptured by the retailers in other ways (e.g., through generally setting higher prices).

Introducing a membership fee to a Loyalty Program heightens the obstacles to enrollment beyond the enrollment process itself. Many customers are familiar with free Loyalty Programs, such as Target's REDcard, Kroger's Fuel Rewards program, Sephora's Beauty Insider program, Nordstrom's Nordy Club program, and United Airlines' MileagePlus program. Today, customers are less likely to join a Loyalty

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<sup>12</sup> Walmart, "Wal-Mart Cuts Generic Prescription Medicines to \$4," available at <https://corporate.walmart.com/newsroom/2006/09/20/wal-mart-cuts-generic-prescription-medicines-to-4> (last visited March 13, 2023).; H-E-B, "Generics As Low As \$4," available at <https://www.heb.com/static-page/Generics> (last visited March 13, 2023).; HyVee, "\$4 Generics," available at <https://www.hy-vee.com/my-pharmacy/services/four-dollar-generics> (last visited March 13, 2023).



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Program when a membership fee must be paid, although they may assess a membership fee differently if it is required to access the retailer at all (e.g., Costco or Netflix). The membership fee raises the bar for customers to be able to feel they will receive fair value from the program.

Overall, the enrollment decision-making process is explained by the “Idiosyncratic Fit Heuristic,” a concept explored in research from experts in this field.<sup>13</sup> A key factor that affects customer response to marketing programs and promotional offers is the perceived relative advantage of “fit” with customer idiosyncratic conditions and preference.<sup>14</sup>

In the context of Loyalty Programs, Idiosyncratic Fit refers to the way customers often evaluate Loyalty Program attractiveness on the basis of the individual effort required to obtain the reward relative to the relevant reference effort (e.g., the effort of typical other customers).<sup>15</sup> This analysis necessarily includes an evaluation of a customer’s “effort advantage.”<sup>16</sup> The effort advantage means that a person self-identifies as having affinity for the brand or its products, likes the shopping experience, has convenient access to physical stores, and/or finds the retailer’s website easy to use. The customer knows they have shopped at the retailer in the past and will continue to shop with them in the future based on their experiences and preferences. For example, if I like Dick’s Sporting Goods because I know they carry my favorite brand of athletic shoes and I buy those shoes three times per year, then I can mentally calculate the benefits I would earn in a Loyalty Program. This predisposes me to want to participate in Dick’s Loyalty Program and by definition, I have an Idiosyncratic Fit with the program.

When customers believe they have an effort advantage over others (i.e., they have an Idiosyncratic Fit with the Loyalty Program, as described above), they will join and participate in Loyalty Programs at higher rates than customers who do not believe they have this advantage. Research shows that the higher the program requirements, the more likely it is that the customers who identified an Idiosyncratic Fit with the program would have a magnified perception of advantage of the program and therefore an higher, overall perceived value of the program.

## **ii. Barriers to Entry: Enrollment Process**

Even if no membership fee is required, customers may resist joining Loyalty Programs because of other obstacles to enrollment, listed below:

- **Value:** The value proposition must be strong enough that customers perceive value in enrolling. The attainability of redeeming rewards and the time needed to earn a benefit are other determining factors.
- **Time:** People are overwhelmed by so many Loyalty Program options that they often hesitate to join more programs. Subjective factors influence enrollment. A customer who receives an offer to join a program while in a busy line or late for work will often not complete any form of enrollment.

<sup>13</sup> Kivetz, R., & Simonson, I., “The Idiosyncratic Fit Heuristic: Effort Advantage as a Determinant of Consumer Response to Loyalty Programs,” *Journal of Marketing Research*, vol. 40, no. 4, Nov. 2003, pp. 454–67, JSTOR, available at <http://www.jstor.org/stable/30038878> (“The Idiosyncratic Fit Heuristic”).

<sup>14</sup> The Idiosyncratic Fit Heuristic, at 455.

<sup>15</sup> The Idiosyncratic Fit Heuristic, at 455-56.

<sup>16</sup> The Idiosyncratic Fit Heuristic, at 456-67.

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- **Convenience:** Customers often do not have time to fill out forms and read lengthy disclosures. The effort it takes to join the program is important. Customers may also resist carrying loyalty cards or downloading mobile apps as a requirement for membership.
- **Data Required:** Customers often resist having to provide personal information. The level of personal data required to enroll in the program is a key factor that affects willingness to enroll.
- **Transparency:** The transparency of the program, including the terms and conditions, can also affect how customers evaluate its value. A program that is transparent in its rewards, redemption options, and rules (including requirements to participate and terms and conditions) is more likely to be perceived as valuable.
- **Exclusivity & Status:** The exclusivity of the program can influence how customers view its value. If the program is limited to a specific group of customers or provides exclusive benefits, it may be perceived as more valuable.<sup>17</sup>

**iii. Membership Fees**

Another obstacle to joining is an enrollment or membership fee. In my opinion, based on my decades of experience in the industry, that customer's decisions to enroll, participate, and remain in a Loyalty Program are influenced by multiple factors, and most customers resist paying even a small amount to join a Loyalty Program.

Americans belong to an average of 14.8 Loyalty Programs, according to recent research.<sup>18</sup> In my experience, only one or two of those programs require a membership fee. One such fee-based program for many people is Amazon Prime. Another is Walmart Plus, a subscription Loyalty Program launched to help Walmart compete with Amazon Prime.<sup>19</sup> Other than these two programs, I am aware of no other examples of Subscription Programs offered by retailers that have this level of visibility to customers. This is a reason why many customers resist paying even a small amount to join a subscription Loyalty Program.

In my experience, including a membership fee as a program feature, which is a significant obstacle to enrollment, means fewer customers elect to join the Loyalty Program, further distinguishing them from other customers at the retailer.<sup>20</sup>

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<sup>17</sup> Loyalty Science Lab, "Do Loyalty Programs Work?", May 21, 2020, available at <https://medium.com/swlh/do-loyalty-programs-work-32ff4d307a9f> (last visited March 14, 2023) (summarizing Malika Chaudhuri, Clay M. Voorhees, and Jonathan M. Beck (2019), "The Effects of Loyalty Program Introduction and Design on Short- and Long-Term Sales and Gross Profits," *Journal of the Academy of Marketing Science*, Vol. 47, p.640–658 and Nick J.F. Bombaïj and Marnik G. Dekimpe (2020), "When Do Loyalty Programs Work? The Moderating Role of Design, Retailer-Strategy, and Country Characteristics," *International Journal of Research in Marketing*, 37 (1), 175–195).

<sup>18</sup> Bond Loyalty, "2019 Loyalty Report," 2019, at 4.

<sup>19</sup> Walmart Plus is a different program than the \$4 Prescription Drug Program Walmart offers. Today, customers who enroll in Walmart Plus do not receive benefits on their prescription drug purchases. Walmart, "Meet Walmart+," available at <https://www.walmart.com/plus>.

<sup>20</sup> Further support for my experience is found in relevant research on this issue. See Easton, Bing, and Smothers, "Reward me, charity, or both? The impact of fees and benefits in loyalty programs," *Journal of Retailing and Consumer Services*, April 2015, at 79.

**CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER****D. Walgreens' PSC: A Subscription-Based Loyalty Program**

Based upon my experience and review of the materials relating to Walgreens' PSC, I conclude that the enrollment process and membership fee render PSC a subscription-based Loyalty Program. My conclusion is further supported by the testimony of Walgreens' current and former employees. For example, former employee Jay Bernstein testified that the customers who join PSC do it knowing that they must pay a membership fee and agreeing to the terms and conditions.<sup>21</sup>

As an initial step, I analyzed the benefits of joining the program in order to determine how customers would be able to evaluate whether to engage in the enrollment process and pay the membership fee. Overall, the program offers incentives for customers to shop not only in the Walgreens pharmacy, but also in other areas of the store to take full advantage of the program benefits. Importantly, however, the benefits of PSC are largely dependent on the circumstances of the individual customer. For example, despite the obstacles to enroll, PSC may be more attractive to a customer who purchases several prescriptions that are included in PSC every month than a customer who fills a few prescriptions every year. For a customer to determine the attractiveness of PSC for their purchases, they would either need to (1) compare the drugs in PSC to those they expect to fill in the upcoming year at Walgreens; or (2) speak with a Walgreens employee about their needs in order to estimate potential annual savings.

Based upon my analysis, the additional effort customers expend in order to determine the value and benefit of PSC for their particular circumstances serves to heighten the obstacles to enroll. Accordingly, the context of my analysis for the obstacles described below considers the obstacles the customer must analyze in order to determine the potential value of the PSC in light of their particular circumstances, even before going through the enrollment process and paying membership fee.

**1. PSC's Enrollment Process Is A Significant Obstacle to Joining**

Walgreens' PSC requires customers to complete an enrollment process. The enrollment process by itself (without even considering the membership fee) constitutes an obstacle to customers joining (enrolling in) the program. In order to join PSC, the customer must complete a series of tasks, which, taken together, are obstacles to completing the enrollment process.

First, the customer must provide personal information.<sup>22</sup> Customers could provide this information initially online or in a Walgreens pharmacy. In my experience, requiring the customer to provide their personal data is an obstacle to enrollment because customers generally resist providing personal information. Specifically, in the enrollment process, the customer is asked to provide both their mailing address and email address, both of which are considered personal, and many customers are hesitant to provide it for a Loyalty Program, like PSC.<sup>23</sup> In addition, this step presents obstacles with respect to completing the request for information. If a customer does not have the time or interest to provide all information requested, they will not enroll in PSC.

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<sup>21</sup> Deposition of Jay Bernstein, *Cynthia Russo, et al. v. Walgreen Co.*, Case No. 1:17-cv-02246, September 14, 2019, pp. 1-158, ("Bernstein Deposition"), at 24:6-12;

<sup>22</sup> PSC Talking Points and FAQs 2012, at Walg\_Forth\_00040902; "Prescription Savings Club Procedures," WAGDCO\_Forth\_00006156 ("2016 PSC Enrollment Process"), at WAGDCO\_Forth\_00006156-00006157.

<sup>23</sup> PSC Talking Points and FAQs 2012, at Walg\_Forth\_00040902; 2016 PSC Enrollment Process, at WAGDCO\_Forth\_00006157 (noting that the permanent card will be mailed in 10-14 days).

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Second, until recently, the customer was required to go to a Walgreens pharmacy, in person, to execute an acknowledgement that they have reviewed the program's terms and conditions and that they agree to the terms and conditions.<sup>24</sup> This step could not be conducted online, but needed to be done in person at a Walgreens store. This step presented two obstacles: time and convenience. Customers may not believe they have time and will not want to spend the time to review terms and conditions in order to enroll in the program. In addition, it is inconvenient for a customer to be required to come to the store, rather than enrolling online.

I understand that Walgreens slightly modified this process and now allows the customer to enroll in PSC online and does not require the customer to visit a Walgreens pharmacy in person.<sup>25</sup> This change may be more convenient for some customers, particularly those who are proficient with technology. Other customers who are less familiar with technology may not be able to utilize the online enrollment feature, and, therefore, the change does not affect the obstacles I have previously described. In addition, online enrollment can heighten customers' concerns about providing personal data, thereby emphasizing that it acts as an obstacle to enrollment. Finally, there is a trust factor that many customers like to have to be certain that they are receiving good and accurate advice about the cost of subscriptions they will need. Just like some people will not trust an ATM to process a deposit, some don't trust the information from a website or chatbot. They need the additional step of going in the store to talk to a person (the pharmacist) and be absolutely sure of benefits in order to make a decision to join the program.

Overall, the first two steps of enrollment present significant obstacles in light of the data sought, the time required and inconvenience associated with completing the process.

## **2. PSC's Membership Fee Represents A Significant Obstacle To Joining**

Based on my experience, the membership fee for Walgreens Prescription Savings Club represents a significant obstacle to enrollment and continued membership to the Loyalty Program. The enrollment fee to join or to renew membership in PSC is \$20 for an individual and \$35 for a family.<sup>26</sup> Generally, as described above, the membership fee raises the bar of the Idiosyncratic Fit for customers. That is, the customer's evaluation of PSC's attractiveness is dependent upon the potential benefits in comparison to the fee required to enroll and maintain membership. As noted above, in my experience, many customers resist paying a membership fee at any amount, and will decline to join Loyalty Programs that charge a membership fee.

Testimony from Walgreens' current and former employees confirms that the membership fee was intended to be, and in fact was, an obstacle to enrollment. Bernstein confirmed that the membership fee "was a significant barrier to entry so that this was club pricing, and we wanted to make sure that everybody knew that that was club pricing, only for members of the [PSC]."<sup>27</sup> Testifying as Walgreens'

<sup>24</sup> PSC Talking Points and FAQs 2012, at Walg\_Forth\_00040903; 2016 PSC Enrollment Process, at WAGDCO\_Forth\_00006157 (requiring customer to answer two questions and execute on the PIN pad).

<sup>25</sup> Walgreens, "Prescription Savings Club," available at <https://www.walgreens.com/psc/prescription-savings-club> (last visited March 13, 2023).

<sup>26</sup> PSC Talking Points and FAQs 2012, at Walg\_Forth\_00040901; 2016 PSC Enrollment Process, at WAGDCO\_Forth\_00006156; Walgreens' 30(b)(6) Deposition of Michael Amiet, *Cynthia Russo, et al. v. Walgreen Co.*, Case No. 1:17-cv-02246, November 20, 2019, pp. 1-288 ("Amiet Deposition"), at 79:25-80:1.

<sup>27</sup> Bernstein Deposition, at 35:7-17.

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corporate representative, Michael Amiet confirmed that paying the membership fee allowed customers “to get a different set of prices on their prescriptions than the retail price.”<sup>28</sup> In addition, internal marketing materials identified the fee as one of the barriers to joining PSC.<sup>29</sup> Based upon my experience and analysis of PSC, the membership fee was significant and, therefore, it was reasonable for Walgreens to believe that there were meaningful distinctions between PSC customers and customers who chose not to overcome the obstacles to enroll in PSC.

Further support for my opinion can be found in the enrollment data from a few months between approximately January 2012 and March 2012, when Walgreens lowered the membership fee from \$20 for an individual to \$5.<sup>30</sup> Walgreens lowered the fee as a promotion in order to drive additional enrollment to the program.<sup>31</sup> During those few months, the enrollment in PSC noticeably increased from approximately 100,000 to over 700,000.<sup>32</sup> Moreover, when the membership fee returned to \$20 for individuals, the number of monthly enrollments and renewals decreased significantly.<sup>33</sup> Because no other significant changes were made to the program during those months, I believe that the increased enrollment can be attributed to the reduction in the cost of the fee. This supports my conclusion that the \$20 membership fee was a significant obstacle to entry because it served to dissuade customers from joining PSC.

In addition, in my evaluation of the membership fee, I did not identify any evidence indicating that Walgreens’ personnel were not requiring that customers pay the membership fee. Instead, it appears that, in a vast majority of cases, the PSC price was only given to customers who had engaged in the enrollment process and paid the membership fee.<sup>34</sup>

## **VI. Conclusion**

Based upon my experience and analysis of the relevant facts, it is my opinion that PSC is a subscription-based Loyalty Program. Both the enrollment process and fee are significant obstacles to enroll, which likely cause many customers to choose to not join PSC, forgoing any potential benefits of the program, and results in meaningful distinctions between PSC members and other customers.

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<sup>28</sup> Amiet Deposition, at 72:14-20.

<sup>29</sup> PSC FY09 Interim Marketing Strategy, at Walg\_Forth\_00005269.

<sup>30</sup> Amiet Deposition, at 80:5-20.

<sup>31</sup> Amiet Deposition, at 80:5-20.

<sup>32</sup> Walgreens Affordable Wellness Corporate Innovation Team, “Prescription Savings Club ‘White Paper,’” Walg\_Forth\_00062179, at Walg\_Forth\_00062192.

<sup>33</sup> Walgreens, “PSC + Cash – Highlights – FY12,” Walg\_Forth\_00058481, at Walg\_Forth\_00058484.

<sup>34</sup> Expert Report of Jed Smith, dated March 17, 2023, at ¶ 34 (Explaining that 99.8% of PSC card holders with a PSC transaction were recorded as having paid the PSC membership fee).

# **Exhibit A**

Expert Report of John W. Hanifin  
March 17, 2023

## **Biography**

### **Bill Hanifin, CEO Wise Marketer Group (WMG)**

Bill Hanifin is CEO Wise Marketer Group (WMG) and a Certified Loyalty Marketing Professional (CLMP™). Bill is responsible for the overall management and growth of Wise Marketer Group and serves as the Managing Editor of TheWiseMarketer.com (TWM). TWM is a twenty-year-old brand that was acquired by WMG in 2006.

TWM is known as the Global Voice of Customer Loyalty and is the acknowledged global source of news, education and research serving the Customer Engagement, Loyalty, CRM, and Digital Marketing industry worldwide. TWM has a highly engaged Opt-in newsletter subscribership in excess of 14,000 representing over 120 countries.

WMG operates The Loyalty Academy™ (TLA), which offers the first educational program for marketing professionals in the industry, the Certified Loyalty Marketing Professional™ (CLMP). Loyalty Academy™ offers public workshops for loyalty marketing training and provides corporate training to global brands.

TLA currently has certified 540 marketing professionals in 41 countries. TLA maintains an annual calendar of certification workshops, with events confirmed in 2023 in Dubai, Amsterdam, Morocco, Singapore, Melbourne AUS. Additional events are pending for Cape Town, India, UK and US.

Over a twenty plus year career as a strategist and business development expert in customer loyalty, Bill has created, implemented, managed, and measured Customer Marketing strategies for well-recognized brands. Most of this work was delivered through his strategic advisory firm Hanifin Loyalty, which he operated between 2006 – 2022. Bill has worked with American Express, Circle K, Denny's, Lucky Brands, Master Card, Maverik, McGraw Hill, Panera Bread, Redbox, 7-Eleven, Scotiabank, Shell, Visa, and many more.

Bill has a comprehensive understanding of the complexities of Customer Loyalty in virtually every customer facing brand and retail sector as well as in numerous geographic markets. Bill worked with brands across Latin America for several years, launching cobrand payment card rewards programs through Visa and MasterCard, hotel and retail loyalty programs and multiple coalition programs that are still operating today.

Bill is passionate about understanding the driving forces of customer engagement and consumer purchase decision making. His financial background has enabled a unique set of tools and intellectual property in the financial modeling and management of customer loyalty programs. He has pioneered the creation of a methodology to approach customer loyalty planning through a holistic corporate approach that invokes the cooperation of cross-functional leadership and C-Suite support.

Bill is an accomplished speaker and trainer and has participated in numerous industry events around the world as a keynote speaker and workshop facilitator. He is an acknowledged thought leader and his work has been published in Forbes and other recognized business publications. Bill is a popular trainer

and has led dozens of public and privately organized workshops in the U.S., Canada, Latin America, EU, and Asia Pacific regions.

Bill is based in South Florida and is an outdoor enthusiast, with a life-long love of the water and endurance sports. He is a multiple Ironman finisher and has discovered some of his best ideas during a long run, bike, or open water swim.



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**List of Publications Authored in Past 10 Years**

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- 347. *Best in Leadership*, Bill Hanifin, January 14, 2013
- 348. *Best of Loyalty & CSR*, Bill Hanifin, January 1, 2013

# **Exhibit B**

Expert Report of John W. Hanifin  
March 17, 2023

**Materials Considered**

**1. Case Filings**

- a. Fourth Amended Consolidated Class Action Complaint (Dkt. 477)
- b. Walgreens' Answer to Fourth Amended Complaint (Dkt. 485)
- c. Plaintiffs' Memorandum in Support of Motion to Certify Class and corresponding exhibits (Dkts. 555 556-60).

**2. Deposition Testimony**

- a. Walgreens' Corporate Testimony, Michael Amiet;
- b. Jay Bernstein
- c. Blake Slansky
- d. Cade Erland
- e. Wendy Barnes
- f. Bran Correia
- g. Dr. Kenneth Schafermeyer
- h. Dr. Lynette Hilton

**3. Written Discovery**

- a. Walgreens' Second Amended Objections and Responses to Plaintiffs' Third Set of Interrogatories, dated November 11, 2020.
- b. Walgreens' Third Amended Objections and Responses to Plaintiffs' Second Set of Requests for Admission, dated October 28, 2021.

**4. Walgreens' Produced Documents**

- a. Walg\_Forth\_00002876
- b. Walg\_Forth\_00004691
- c. Walg\_Forth\_00005266
- d. Walg\_Forth\_00012624
- e. Walg\_Forth\_00013520

- f. Walg\_Forth\_00020360
- g. Walg\_Forth\_00021023
- h. Walg\_Forth\_00021026
- i. Walg\_Forth\_00037154
- j. Walg\_Forth\_00038301
- k. Walg\_Forth\_00040901
- l. Walg\_Forth\_00045054
- m. Walg\_Forth\_00058481
- n. WAGDCO\_Forth\_00006156
- o. Walg\_Forth\_00062116
- p. Walg\_Forth\_00062179
- q. Walg\_Forth\_00294473
- r. Walg\_Forth\_00337348
- s. Walg\_Forth\_00350468
- t. Walg\_Forth\_00350472

**5. Other**

- a. Expert Report of Jed Smith, dated March 17, 2023.
- b. Declaration of John M. Lavin, November 18, 2016, Caremark\_Forth\_000188
- c. *United States ex rel Garbe v. Kmart Corp.*, 73 F.3d Supp. 3d 1002, 1008 (S.D. Ill. 2014).
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